

09. 25.09.2019 Heard learned counsel for the parties.
2. The petitioners in this writ petition assail the order dated 18.06.1998 (Annexure-9) passed by the Joint Commissioner, Settlement & Consolidation, Bhubaneswar in Consolidation Revision No.260 of 1993 filed under Section 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act').
3. The dispute between the parties relates to C.S. Plot No.147 under C.S. Khata No.141, which corresponds to Consolidation Plot No.253 under Consolidation Khata No.296, which further corresponds to L.R. Plot No.184 to an extent of Ac.2.65 decimals under L.R. Khata No.243 in village-Barahapal in the district of Balasore (for short 'the case land').
4. The case of the petitioners is that the land was recorded as 'Anabadi' in the C.S. Record of Right. Opposite parties 1 to 3 had filed Objection Case No.1752 of 1979 before the Assistant Consolidation Officer, Camp Court, Rupsa under Section 9(3) of the Act to record their names in respect of case land claiming to have obtained 'Amalnama' from the Ex-intermediaries. The petitioners filed their objection to such claim made by opposite party nos.1 to 3. They prayed to maintain the record of the case land in favour of villagers, on the plea that the plot being 'Anabadi' is in possession of the villagers and they are using the same as tank. However, vide order dated 29.11.1979, the Assistant Consolidation Officer

disallowed the objections filed by the opposite party nos.1 to 3. Subsequently, the opposite party nos.1 to 3 filed Objection Case No.3524 of 1986 under Section 15(1) of the Act, which was also disallowed on the ground that it is hit by principles of *res judicata*. Hence, they filed revision under Section 37(1) of the Act.

5. It is the contention of learned counsel for the petitioners that the petitioners, Boodan Yagyan Samitee, had gifted the case land in favour of the villagers and the petitioners are representing the villagers. As such, the case land should have been recorded in the names of the villagers, which is used as tank and Gochar land. Further, opposite party nos.1 to 3 have no manner of right, title and interest as they based their claim on an 'Amalanama' which has never seen in the light of the day till today. In that view of the matter, the case land should have been recorded in favour of the villagers, but learned Commissioner without appreciating the same directed the Consolidation Officer to record the land in favour of opposite party nos.1 to 3, which is under challenge in this writ petition.

6. Learned counsel for opposite party nos.1 to 3 refuting the arguments made by learned counsel for the petitioners submits that when there was a contentious objection for recording of the case land in favour of the petitioners, the Assistant Consolidation

Officer should not have decided the same. The proper procedure was for the Assistant Consolidation Officer to refer the matter to the Consolidation Office to decide the claim under Section 11 of the Act. Further, the Assistant Consolidation Officer could not have decided the proceeding under Section 15(1) of the Act since it was a contentious claim and ought to have referred the proceeding to the Consolidation Officer for taking decision. However, in the instant case, the Assistant Consolidation Officer had entertained the objection under Section 9(3) of the Act and directed to settle the land in favour of the petitioners, which is not sustainable as rightly held by Revisional Authority. Opposite party nos.1 to 3 are in possession as it is found from records filed before the Revisional Authority. The petitioners could not file any material in support of their claim. As such, the Commissioner has committed no error in directing to record the land in favour of opposite party nos.1 to 3.

7. Upon hearing learned counsel for the parties and on perusal of the record, it appears that the Assistant Consolidation Officer could not have decided the objection either under Section 9(3) or under Section 15(1) of the Act, since it was a contentious claim. The proper procedure was to refer the matter to be decided by the Consolidation Officer to decide the claim. As such, there is no error in the order under Annexure-9 passed by Revisional Authority. Having found so, the Commissioner should not have proceeded to direct the

Consolidation Officer to record the case land in favour of opposite party nos. 1 to 3. The proper procedure for Commissioner was to remit the matter back to the concerned Consolidation Officer to decide the case in accordance with law by scrutinizing the materials on record and giving opportunity of hearing to the parties, more particularly when the unregistered ‘Amalnama’, on the basis of which the opposite party nos.1 to 3 claim their title, was not filed, as alleged by the petitioners.

8. In that view of the matter, the impugned order under Annexure-9 is set aside and the matter is remitted back to the Consolidation Officer or Officer-in-charge of the Consolidation Officer to decide the matter fresh after giving opportunity of hearing to the parties concerned to put-forth their case. Substitution, if any, shall be carried out by the petitioners before the Consolidation Officer. It is made clear that this Court has expressed no opinion on the merits of claim of either of the parties.

Accordingly, the writ petition is allowed to the above extent.

Urgent certified copy of this order be granted on proper application.

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K.R. MOHAPATRA,J.

